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Supreme Court, U.S.
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No. 98-19

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1997

UNITED STATES OF AMERICA, Petitioner

v.

DANNY LYNN QUALLS, Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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REASONS FOR DENYING THE PETITION AND WHY THIS COURT SHOULD RECONSIDER ITS DECISION IN *CARON*

In enacting 18 U.S.C. § 922(g)(1), Congress made it a federal crime for a previously convicted felon to possess a firearm.

> "It shall be unlawful for any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . to . . . possess in or affecting

commerce, any firearm. . . ."

Notwithstanding the express provisions of 18 U.S.C. § 922(g)(1), Congress provided an exception to the felon-in-possession firearm statute. 18 U.S.C. § 921(a)(20) states in relevant part:

> "What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction . . . for which a person . . . has had civil rights restored shall not be considered a conviction for purposes of this chapter, ***unless*** *such . . . restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.*" (Emphasis added).

The Ninth Circuit follows the rule established by 18 *U.S.C.*, Section 921(a)(20) and has consistently examined the laws of the jurisdiction in which the predicate conviction arose in determining whether one has violated the federal firearms statutes, including 18 U.S.C., Section 922(g)(1). See, *United States v. Gomez*, 911 F.2d 219 (9th Cir.1990); *United States v. Brebner*, 951 F.2d 1017, 1021 (9th Cir. 1991); *United States v. Dahms*, 938 F.2d 131 (9th Cir. 1991). *United States v. Andaverde*, 64 F.3d 1305, 1309 (9th Cir. 1995); *United States v. Cardwell*, 967 F.2d 1349, 1350 (9th Cir. 1992).

Recently, this Honorable Court in *Caron v. United States*, __ U.S. __, 118 S.Ct. 2007, __ L.Ed.2d (1998) held that the unless clause of § 921(a)(20) requires that if a state prohibits a felon's possession of any type of firearm, federal law is

activated and the felon is prohibited from possessing any firearm, notwithstanding any state law to the contrary. Although the petitioner in *Caron* urged that the unless clause allows an offender to possess what state law permits him to possess, and nothing more, this Court concluded that while state law is the source of law for restoration of other civil rights, it does not follow that state law also controls the unless clause. In support of this conclusion, this Court stated that:

> "As to possession of weapons, however, the Federal Government has an interest in a single, national, protective policy, broader than required by state law."
>
> *Caron, supra,* __ U.S. __, 118 S.Ct. 2012

Nothing contained within 18 U.S.C. § 921(a)(20) could imply such an interpretation. The plain meaning of § 921(a)(20) is that deference must be given to state law in determining the rights of a felon to possess firearms once that felon's civil rights have been restored. In discussing scenarios that could occur by the application of the all-or-nothing approach, the majority in *Caron* admits that "incongruities" are created, however, this Court felt it more logical to hold that "the Federal Government has an interest in a single, national, protective policy" with regards to firearms than to allow a state to grant felons the restricted use of firearms. This newly created policy consideration cannot withstand scrutiny. Query? How would this policy consideration advanced in *Caron* be applied to a state law that, as part of the civil rights restoration process, restores the felon's right to own and possess all firearms that could be possessed by other citizens? Applying the all-or-nothing

approach, the felon could possess all firearms without becoming an unsuspecting victim of the federal firearm prohibition. If this is so, the Federal Government's "single, national, protective policy" is defeated and would make little sense. How do the statements that "Congress meant to keep guns away from all offenders who, the Federal Government feared, might cause harm, even if those persons were not deemed dangerous by States" and "If federal law is to provide the missing 'positive assurance,' it must reach primary conduct not covered by state law." [*Caron*, __ U.S. __, 118 S.Ct. at 2012] address the situation where a state allows all felons to possess all firearms? Does a felon automatically become less dangerous when the felon is granted access to all firearms rather than access to only certain types of firearms?

The minority's analysis in *Caron* is more consistent with the plain meaning language of § 921(a)(20) and is further consistent with the statutory purpose that was contemplated by Congress in allowing states to govern the civil rights restoration process.

> "Given the primacy of state law in the statutory scheme, it is bizarre to hold that the *legal* possession of firearms under state law subjects a person to a sentence enhancement under federal law. . . . It is simply not true, as the Court reasons, that federal law 'must reach primary conduct not covered by state law.'"
>
> *Caron*, __ U.S. __, 118 S.Ct. at 2013

Because it is far from clear under § 921(a)(20) that Congress intended to occupy the entire field of law dealing with firearm

possession by a felon whose civil rights have been restored, the rule of lenity must be applied. "Ex-felons cannot be expected to realize that a federal statute that explicitly relies on state law prohibits behavior that state law allows." *Caron*, __ U.S. __, 118 S.Ct. at 2014.

CONCLUSION

Defendant QUALLS was in compliance with the laws established by the State of California, and he was complying with the holding of his 9th Circuit Court of Appeals decision in *United States v. Dahms*, 938 F.2d 131 (9th Cir. 1991) when he possessed certain firearms. He should not be punished for what he was told he could do under state law.

The Petition for Writ of Certiorari should be denied with regards to QUALLS' situation and the holding of the 9th Circuit, however, this Court should grant review to correct the erroneous and incongruous holding in *Caron*.

Respectfully submitted,

Dated: October 1, 1998 By: Vernon Tolley